

LEAGUE OF NATIONS

C.322.1935.VII.

Communicated to  
the Council.

Geneva, August 30th, 1935.

FREE CITY OF DANZIG

Dismissal of M. Luck and M. Schmode, employees  
of the Municipality of Danzig.

At the request of the High Commissioner of the League of Nations in Danzig, the Secretary-General has the honour to circulate to the Council a letter dated August 13th, 1935, with annexes, by which the High Commissioner submits this matter for the examination of the Council.

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Danzig, August 13th, 1935.

Sir,

I have the honour to enclose herewith documents relative to the cases of Messrs. Luck and Schmode, employees of the Municipality of Danzig, who were dismissed, according to their declarations, because of their political opinions, dismissal which was upheld by the competent Courts, of first instance and of appeal, on grounds stated.

Articles 79 and 113 of the Danzig Constitution have been mentioned in the prolonged discussions with the Senate which led to a hope expressed by the President of the Senate some time ago, that the men would be reinstated in their employment. By his note of 1st August, 1935 the President informs me that this cannot at present be done.

As I have doubt as to whether the grounds given for the dismissal of these men is consistent with their Constitutional rights, and in view of the letter from the Secretary-General of the League of Nations to the High Commissioner approved by the Council on the 10.VI.1925, I request that the matter should be placed on the agenda of the Council at its next session.

There are other cases of a character similar to those here mentioned:

The following documents are attached:

- 1) Letter from the High Commissioner to the President of the Senate - 28.II.1935 (with annex)
- 2) Letter of the Senate - 23.IV.1935 (VIII.J.19/39).
- 3) Judgment of the "Landesarbeitsgericht" on 18th June, 1934\* concerning the case Schmode - Danzig.
- 4) Judgment of the "Landesarbeitsgericht" on 19.IV.1934\* concerning the case A. Luck - Danzig.
- 5) Note from the President of the Senate to the High Commissioner - 1st August, 1935.

I have the honour, etc.,

(Signed) Sean LESTER.

High Commissioner.

\* Note by the Secretary-General: This document has been placed in the archives of the Secretariat, where it may be consulted by Members of the Council.

Translation.

Danzig, February 28th, 1935,

I have the honour to send you herewith an aide-mémoire on the cases of M. Schmode and M. Luck, and would request you to be so good as to inform me of the Senate's view in the matter.

I have the honour to be, etc.,

(Signed) Sean LESTER

High Commissioner.

To the President of the Senate  
of the Free City of Danzig.

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Annex to the letter dated February 28th, 1935, from the  
High Commissioner to the President of the Senate.

Translation.

M. Alfred Schmode.

I. M. Schmode, a Danzig national, is an ex-soldier and the father of a family. He has produced copies of several certificates regarding the work done by him in the last fifteen years; these certificates are all favourable.

According to the High Commissioner's information, M. Schmode was in the service of the Municipal Electricity Company as employee from March 15th, 1924, to October 30th, 1933; while from October 30th, 1933, to March 31st, 1934, he was in the service of Taxation Office No.3.

On September 11th, 1933, Schmode received notice from the Municipal Electricity Company - with which he was then employed - of the termination of his contract of service "for technical reasons connected with the administration of the undertaking" ("betriebs-technische Gründe").

Schmode brought proceedings before the Labour Court and then before the Supreme Labour Court; he asserted among other things that the termination of his labour contract was null and void because it was due to political reasons, and was therefore contrary to Articles 79 and 113 of the Constitution.

The Supreme Labour Court, by a judgment published on June 18th, 1934 (Landesarbeitsgericht No. a.LAS.41/34) confirmed the judgment of the first instance which had rejected Schmode's suit.

There is no occasion to examine here the whole of the judgment pronounced by the Supreme Labour Court. It will be sufficient to deal with the essential passages relating to the provisions of the Danzig Constitution, which were examined by the Court in connection with their application to the present case (Grounds for Decision, III).

In considering whether there is in the present case a valid reason for terminating the contract, the Court declares that the trend of political and economic events at Danzig since May 1933 must be borne in mind. The Court recalls that at this date the trade unions were replaced by National Socialist organisations; the principle of co-operation between all the factors concerned in production replaced the principle of class-warfare; the National Socialist doctrine having asserted its predominance at the elections of May 28th, the same situation existed in the electricity factory where Schmode was then employed, the Employees' Committee of that factory consisting entirely of National Socialists.

In these circumstances, Schmode, who as a former member of the Social Democratic Party had been unable to free himself from the Marxist doctrine advocating class-warfare, could not be regarded as providing his employers with sufficient guarantees as to the reliability of his work ("zuverlässige Arbeit"). The Court does not in principle dispute Schmode's right, which is guaranteed by the Constitution, of holding such Marxist views (it does not assert that Schmode had applied Marxist principles), but it merely adds that according to the National Socialist doctrine, strikes and class-warfare must be considered as contrary to public morality, and that hence Schmode's presence at the factory was likely to cause unrest and to disturb peaceful labour relations.

The management of the factory "must therefore be regarded as justified in dismissing the plaintiff from its service".

Mention should also be made of Senator Huth's declaration that he would not tolerate any Marxists in his concern; Senator Huth is also stated to have added that he would take energetic steps against Marxist activities, but that every true servant of the State would be rewarded by being given security of livelihood.

The Court concludes that the termination of the contract of service does not bear the character of a political measure; and that it is justified as being based on objective reasons.

## II. M. Alfred Luck.

M. Luck is also a Danzig national; he was employed by the Municipal Waterworks as workman from May 10th, 1926, to April 17th, 1933. He was notified of dismissal on August 3rd, 1933, on account of "unsuitability" ("Ungeeignetheit").

In the course of the suits brought by Luck before the Labour Court and in the second instance before the Supreme Labour Court, particularly on the basis of Articles 79 and 113 of the Constitution, the Municipal Water Company (see the Grounds for the Decision of the Supreme Labour Court in the judgment published on April 19th, 1934) asserted that in view, on the one hand, "of the attitude taken by the plaintiff with regard to labour relations as created throughout Germany and in Danzig by the new order governing political

and social conditions; and in view of the fact, on the other hand, that this new ordinance on labour relations now plays a preponderating part in the municipal undertakings, both in the management and among the employees and workers, the plaintiff's attitude was so hostile to this new order that the defendant could not be expected to keep him in its service if it was to avoid endangering order and security in the undertaking".

The Supreme Labour Court endorsed the point of view expressed by the Municipal Water Company; it recalled inter alia that Luck was a member of the "Allgemeiner Arbeiterverband", which stands for the old Marxist doctrines, that the interests of the employer - particularly as the latter is a public undertaking - were threatened in such circumstances, and that in consequence the Municipal Water Company was entitled to terminate Luck's labour contract without laying itself open to the charge that it had acted for political reasons.

III. M. Schmode's dismissal - as shown by the judgment pronounced by the Supreme Labour Court - is based on technical reasons connected with the administration of the undertaking ("betriebstechnische Gründe"); and M. Luck's dismissal is based on his "unsuitability" ("Ungeeignetheit").

In the first case, the Court did not go into the technical reasons which are stated to have led to the termination of the plaintiff's employment, but confined itself to relying on M. Schmode's political opinions in drawing the conclusion that Schmode's presence at the factory did not give the employer sufficient guarantees of reliable work. M. Schmode is not charged with any concrete offence.

As regards M. Luck, the Court expresses the opinion that his "unsuitability" was due to his political opinions. Here, too, M. Luck is not charged with any concrete offence.

In view of the reasons given by the Court in the two above-mentioned judgments, the High Commissioner requests the Senate of the Free City to inform him of its views in this connection in relation with Articles 79 and 113 of the Danzig Constitution, guaranteed by the League of Nations, which read as follows:

Art. 79: "Every person shall have the right, within the limits of the law, to express his opinion by word, writing or in any other manner. He may not be obstructed in this right by any conditions of his work or appointment, and no disadvantage of any kind may be imposed on him on account of his exercise of such right....."

Art. 113: "Freedom of association with the object of guaranteeing and improving conditions of labour and economic conditions shall be secured to all individuals and to all vocations. Any agreements and measures tending to restrict or obstruct such freedom are illegal."

ANNEX 2.

Translation from the German.

Senate of the Free City  
of Danzig.

Danzig, April 23rd, 1935.

I beg to forward herewith the reply on the questions of fact raised in letter 21/35/II of February 28th, 1935, with regard to the Memorandum on the cases of Schmode and Luck.

I have, etc.

(Signed) GREISER.

To the High Commissioner of the  
League of Nations,  
Danzig.

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Annex to the letter from the Senate of the Free City  
of Danzig, dated April 23rd, 1935.

Translation from the German.

Danzig, March 12th, 1935.

The labour contracts concluded between the municipality of Danzig as employer and the former clerical employees, Luck and Schmode, made provision for dissolution of the contract on either side subject to the legal term of notice. Pacta sunt servanda. Just as the municipality of Danzig would have had to accept a dissolution of the contract with Luck and Schmode, if the latter had made use of their right to give notice, so the two Petitioners must also accept their dismissal as a consequence, provided for in the contract, of the notice given to them in due form and with due observance of the term of notice. In this connection, it should be noted that in cases like the present there is no obligation to state the grounds for the notice, since this is not a case of notice for grave reasons, which would be subject to examination by the courts: in both cases the notice was given with due observance of the term for which the contract provided.

The position does not in any way differ from that of a contract of lease concluded between a house owner and a tenant. Just as any tenant must accept notice of his tenancy on the part of the lessor, and must give up his dwelling, even though he has given no grounds for termination of the tenancy and has behaved well and would prefer to remain in the dwelling, so every employee must surrender his employment, if his service comes to an end as a result of notice on the part of the employer.

Such a dissolution of contractual agreement is not only in accordance with the law, since provision is made therefor in the contract; it is also justified on social grounds. The exercise of the contractual right to give notice makes it possible for the employer to effect changes in the composition

of his staff. It enables him, for example, to replace elderly workers who are no longer up to their work by younger men: it also enables him to compel employees, who for years or tens of years have had the good fortune to be in work and to be enabled to earn their living, to make place for others who for years have been without employment though only too anxious to earn a subsistence for themselves and their families by the work of their hands and to show themselves useful members of the community.

Notice given with due observance of the term provided by the contract is invalid only if it is given because of the employee's membership of political parties or associations or other political activities (Article 79 of the Danzig Constitution), or membership of trade unions or other economic associations which the employer dislikes (principle underlying Article 113 of the Danzig Constitution). In such a case the notice is a violation of a legal provision, and is invalid under §134 of the Civil Code.

It is for the employee to prove that these conditions are present. In the case of Luck and Schmode there is no such proof. On the contrary, the investigation has shown in both cases that the grounds on which the municipality of Danzig made use of its contractual right to give notice and replace the two Petitioners by other workers were to be found in the fact that the Petitioners were dangerous to the concern in which they worked. They were dangerous to the concern in which they worked because they were unreliable.

Schmode showed his unreliability by the fact that he was formerly active as a member of the Social Democratic Party and as an official of the trade union known as the Free Employees' Association (Freier Angestelltenverband), as also by the fact that so lately as October 1933, in a conversation with the Senator in charge of Public Works, Undertakings and Communications, Engineer Huth, he said that he could not agree with the prevailing standpoint, thereby showing that he is an adherent of the old marxist principle of the strike as the most effective weapon in the class war.

The Petitioner Luck gave clear proof of the fact that he is consciously unable or unwilling to discard the above-mentioned discredited attitude in labour matters by the fact of his joining the General Association of Employees, which believes in the old marxist principles of the labour struggle.

In both cases the material interests of the employer and of the undertaking were affected by the unreliable, and therefore dangerous, character of the Petitioners to such an extent that the employer could not be expected to tolerate the continued employment of the Petitioners in connection with the undertaking. Judgment of what is contrary to public morals in connection with the labour struggle is governed, according to the findings of the Labour Court of the Reich itself in the period previous to 1933, among other considerations, by the particular views and conditions prevailing in labour circles. Who would be prepared to assume responsibility for the continued employment in concerns of vital importance,

such as a municipal electricity works or water works, of elements in connection with which there is a danger that they will seize an opportunity of inflicting the most serious injuries on the life and health of innumerable fellow-creatures?

There was another direction in which the Petitioners Luck and Schmode were dangerous to the operation of the undertaking. Both Petitioners by their attitude (to which reference has been made) had deliberately placed themselves in a position apart from the other employees of the undertaking, who were already in the Petitioners' time overwhelmingly National Socialist. By so doing they justified the assumption that their attitude would make trouble with the other employees in the undertaking which would inevitably lead to disturbance of the labour peace.

Any private individual would regard the existence of such a danger to his undertaking as a reason for terminating the service of the employees concerned by giving notice with due observance of the contractual term at the next possible date. The State in its capacity as employer is a fortiori entitled to make use of the right of notice which belongs to both parties under the contract, since it is a principle of labour law which has always been recognised that the position of the State as employer implies more extensive powers of direction than that of private employers, particularly (as stated) in the case of undertakings of vital importance. If in cases like the present the exercise of the right of notice as contractually provided were not admitted, the effect would be to place those workers who are members of the Social Democratic Party or of the Free Association of Employees in a privileged position.

All employees and workers in the position of the Petitioners would in such case allege membership of the political or economic organisations referred to in the event of their being given notice, and would contend that the action taken against them was taken on political grounds. They would thus be enabled to nullify any notice of termination of their services in accordance with their contracts.

Such a settlement would be inconsistent with the spirit of the Danzig Constitution, and the present National Socialist Government in particular could not be expected to agree to it.

Translation from the German.

Memorandum.

The High Commissioner has had repeated conversations with the President of the Senate over the case of Luck and Schmode. In June last the President said that he hoped to be able to settle the matter by reinstating these two men. He did not know then, however, that the Supreme Labour Court, which is the highest authority on labour questions, had pronounced judgment. In these circumstances, and in consideration of the fact that at present hundreds of employees and workers are being dismissed from the municipal and State undertakings, including, of course, a large number who are loyal to the Government, he much regrets that it is impossible for him for the moment to reinstate Luck and Schmode.

Danzig, August 1st, 1935.